BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2017-346-E

IN RE:	South Carolinians Against Monetary Abuse (SCAMA) and Leslie Minerd, Complainants/Petitioners, v. South Carolina Electric & Gas Company, Defendant/Respondent.	**MOTION TO DISMISS, GRANT JUDGMENT ON THE PLEADINGS, AND HOLD TESTIMONY FILING DATES IN ABEYANCE**

Pursuant to 10 S.C. Code Ann. Regs. 103-829 and Rules 12(b)(6) and 12(c) of the South Carolina Rules of Civil Procedure ("SCRCP"), South Carolina Electric & Gas Company ("SCE&G" or the "Company") herein moves for an order of the Public Service Commission of South Carolina ("Commission") dismissing and/or granting judgment on the pleadings of the Request for SCE&G Monthly Bill to Reflect BLRA Monthly Charge ("Request") filed by South Carolinians Against Monetary Abuse ("SCAMA") and Leslie Minerd ("Ms. Minerd") (collectively, "Complainants"). This Motion should be granted on the grounds that SCAMA is not a legitimate organization and does not have standing to bring this action. Further, this Motion should be granted because the Request (1) is the product of the unauthorized practice of law; (2) improperly seeks to bring an action in a representative capacity on behalf of other customers; (3) fails to comply with applicable statutory and regulatory law;

(4) seeks relief that has previously been denied by the Commission; and (5) fails to state facts sufficient to constitute a basis for relief under pertinent law. SCE&G also moves that the Commission hold in abeyance the testimony filing dates set forth in the Revised Scheduling Notice dated December 19, 2017, until such time as the Commission may consider and resolve this Motion. In support thereof, SCE&G would respectfully show as follows:

BACKGROUND

Complainants commenced the instant action by filing the Request with the Commission on or about November 20, 2017. Therein, Ms. Minerd asserts that the "filing is being made by [her] … for [SCAMA]" and "[o]n behalf of … SCAMA and [her]self." Request at 2, 9. SCAMA is not identified in the Request as a customer of SCE&G, but rather a "voice of supportive members of the public" and a "reflection of public consciousness" that is "whimsical" and "ephemeral" and that "has never claimed to be a formal organization and … is the epitome of disorganization or non-organization." *Id.* at 2.

Through the Request, Complainants seek for SCE&G to "voluntarily" delineate the portion of a customer's bill attributable to the Base Load Review Act ("BLRA") as a separate line item on the bill. *Id.* at 1-2, 8. Complainants alternatively request that, unless SCE&G takes such "voluntary initiative," the Commission "issue an order requiring the BLRA charge to appear on the bill." *Id.* at 8.

Complainants recognize, however, that 10 S.C. Code Ann. Regs. 103-339(2) governs the information required to be presented on a customer's electric service bill.

See Request at 4. Complainants also concede that, in Order No. 2012-884, issued in Docket No. 2012-203-E on November 15, 2012, the Commission denied a request seeking the same relief sought by Complainants in this proceeding. *See* Request at 4-5 (quoting Order No. 2012-884); *see also* Order No. 2012-884 at 12 (finding that granting the request would not be an appropriate manner in which to implement a change to 10 S.C. Code Ann. Regs. 103-339(2)).[1] Complainants further acknowledge that they are informed about the proper procedure to effectuate a change to a Commission Regulation. *See* Request at 5 ("The appropriate mechanism for such a change would be to initiate a rulemaking proceeding where the Commission receives public comment and the General Assembly has the requisite opportunity to review and approve the regulation.") (quoting Order No. 2012-884 at 12).

Nevertheless, Complainants specifically deny that they are seeking to initiate a formal rulemaking to change the applicable law and expand the requirements of the billing information required by 10 S.C. Code Ann. Regs. 103-339(2). *See* Request at 7 ("There is no request being posed in this filing for any party to initiate a formal rulemaking to change the applicable law."). Instead, they seek to relitigate matters previously ruled upon by the Commission, not based upon any alleged injury suffered by customers, but rather purportedly to "facilitate the customer's awareness and understanding of the bill." *Id. But see* Request at 5 ("The required information to be

[1] Following the issuance of Order No. 2012-884, the Commission again addressed a request to separately list charges related to the BLRA on customers' bills and again denied the request for the same reasons set forth in Order No. 2012-884. *See* Order No. 2012-951, issued in Docket No. 2012-218-E on December 20, 2012, at n.1 (denying a request to require SCE&G to include on customers' bills a separate line item for charges related to the BLRA for the same reasons set forth in Order No. 2012-884). Accordingly, the Commission has twice denied requests that are identical to those advanced by Complainants in the instant proceeding.

included on electricity bills provides a balance between providing customers with information necessary to ensure that each bill is calculated correctly while ensuring that the bill does not become overly complicated or confusing to customers.") (quoting Order No. 2012-884 at 12).

LEGAL STANDARD

A complaint must be dismissed if it fails to allege facts to support a claim upon which relief can be granted. Rule 12(b)(6), SCRCP. A defendant may move for dismissal when the plaintiff does not allege facts sufficient to constitute a cause of action. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999). If the plaintiff is not entitled to relief, then it is proper to dismiss the case. *Spence v. Spence*, 368 S.C. 106, 122, 628 S.E.2d 869, 877 (2006). In considering a motion to dismiss based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). The Court must grant the motion if "the facts alleged [in a complaint] and inferences reasonably deduced therefrom, viewed in the light most favorable to the plaintiff" fail to "entitle the plaintiff to relief on any theory." *Carolina Park Associates, LLC v. Marino*, 400 S.C. 1, 6, 732 S.E.2d 876, 878 (2012) (*quoting Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007)) (internal quotations omitted); *see also Chewning v. Ford Motor Co.*, 346 S.C. 28, 32-33, 550 S.E.2d 584, 586 (Ct. App. 2001).

Rule 12(c), SCRCP also provides that "[a]fter the pleadings are closed … any party may move for judgment on the pleadings." When considering such a motion,

the court must regard all properly pleaded factual allegations as admitted. *Russell v. City of Columbia*, 305 S.C. 86, 406 S.E.2d 338 (1991). "A judgment on the pleadings shall be granted 'where there is no issue of fact raised by the complaint that would entitle the plaintiff to judgment if resolved in plaintiff's favor.'" *Home Builders Ass'n of S. Carolina v. Sch. Dist. No. 2 of Dorchester Cnty.*, 405 S.C. 458, 460, 748 S.E.2d 230, 231 (2013) (*quoting Sapp v. Ford Motor Co.,* 386 S.C. 143, 687 S.E.2d 47 (2009)).

ARGUMENT

The Request should be dismissed. SCAMA is neither a customer of SCE&G nor an entity that can suffer any cognizable injury from SCE&G and, therefore, lacks standing to advance claims against the Company. In addition, Ms. Minerd is not a licensed attorney or otherwise authorized to advance any claims on behalf of SCAMA or other electric customers of SCE&G. The Request also does not identify any failure of the Company to comply with applicable statutes and regulations. As previously determined by the Commission, the Request also is not an appropriate mechanism by which to implement a change to the Commission's regulatory requirements. *See* Order No. 2012-884 at 12. Finally, Complainants have not identified any cognizable injury sufficient to assert standing to bring this action.

A. SCAMA does not have standing to pursue any claim against the Company.

In order to have standing to advance a claim before the Commission, a party must have a personal stake in the subject matter of the proceeding. *See Duke Power Co. v. South Carolina Pub. Serv. Comm'n*, 284 S.C. 81, 326 S.E.2d 395 (1985) (stating that a party must have a "personal stake" in the subject matter of the proceeding). To

establish standing, a party must show that (1) they have suffered an injury-in-fact; (2) there is a causal connection between the injury and the conduct about which they complain; and (3) it is likely, rather than merely speculative, that their alleged injury will be redressed by a favorable decision. *Sea Pines Ass'n for the Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res.*, 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)). They also must show that they have an actual or likely "invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical" if the relief is not granted. *Smiley v. S.C. Dep't of Health and Envtl. Control*, 374 S.C. 326, 329, 649 S.E.2d 31, 32-33 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)). The person asserting standing also "must be affected in a personal and individualized way by the [regulatory] decision." *Smiley*, 374 S.C. at 330, 649 S.E.2d at 33 (quoting *Lujan*, supra).

As "a Facebook and public presence" that "has no officers, structure, membership, budget, or meetings and that is "the epitome of disorganization or non-organization," Request at 2, SCAMA is not a customer of SCE&G and does not receive electric service from the Company. SCAMA therefore fails to show that, as a "whimsical" and "ephemeral" "non-organization," it has, or even could have, a personal stake with respect to the Request or that it will be injured, or even could be injured, if the requested relief is not granted. Consequently, SCAMA does not possess the requisite standing to be a party of record in this docket. *Cf. Duke Power*, supra (holding that actual ratepayers lacked standing because their asserted interests were

too contingent, hypothetical, and improbably to support standing to attack the … practices of the Public Service Commission."); *see also* Order No. 2010-221, issued in Docket No. 2009-489 on March 16, 2010 (denying petition to intervene on the grounds that a proposed intervenor was not a ratepayer and did not state any other grounds to show a reasonable connection to the case). No basis or grounds exist to permit SCAMA to pursue any remedy against the Company, and the Commission should therefore dismiss SCAMA from this proceeding and dismiss any assertions or claims made by it or on its behalf for lack of standing.

B. The Request should be dismissed as it is the product of the unauthorized practice of law and Ms. Minerd cannot seek relief on behalf of other ratepayers.

As set forth in the Request, Ms. Minerd is attempting to bring this action on behalf of SCAMA, a "non-organization." Request at 2 ("This filing is being made by Leslie Minerd … for … SCAMA."). She also purports to represent all electric customers in this proceeding by seeking relief on their behalf as well. *Id.* at 9 ("[W]e request that SCE&G, ORS, and the PSC take immediate action to act in the interest of SCE&G rate payers…."). In either event, whether attempting to act on behalf of a "non-organization" or the Company's electric customers, Ms. Minerd has engaged in the unauthorized practice of law by filing this Request, and it therefore should be dismissed on this additional basis.

"The generally understood definition of the practice of law embraces the preparation of pleadings, and other papers incident to actions and special proceedings, and the management of such actions and proceedings on behalf of clients

before judges and courts." *Roberts v. LaConey*, 375 S.C. 97, 103, 650 S.E.2d 474, 477 (2007) (*citing Brown v. Coe*, 365 S.C. 137, 139, 616 S.E.2d 705, 706-07 (2005) (emphasis supplied). *See also* 10 S.C. Code Ann. Regs. 103-804(O) (defining a "pleading" as a "document seeking relief in a proceeding before the Commission, including [a] complaint, answer, application, protest, request, motion … or petition.") (emphasis added).

Pursuant to S.C. Code Ann. § 40-5-310, "[n]o person may either practice law or solicit the legal cause of another person or entity in this State unless he is enrolled as a member of the South Carolina Bar … or otherwise authorized to perform prescribed legal activities by action of the Supreme Court of South Carolina." The Commission's Practice and Procedure Regulations, 10 S.C. Code Ann. Regs. 103-805(A), also provide that "[n]o one shall be permitted to represent a party where such representation would constitute the unauthorized practice of law." *See also* 10 S.C. Code Ann. Regs. 103-805(B) ("[A]ny entity … must be represented by an attorney") (emphasis added); 10 S.C. Code Ann. Regs. 103-805(C) ("An individual not admitted to practice law in South Carolina may represent himself or herself, but may not represent another person.").

Ms. Minerd is not licensed as an attorney or otherwise authorized to practice law in South Carolina and, therefore, is unable to lawfully prepare and file pleadings on behalf of any entity or on behalf of SCE&G's electric customers. *See* 10 S.C. Code Ann. Regs. 103-804(T) ("Those persons who may act in a representative capacity are the following: (a) An individual may represent himself or herself in any proceeding

before the Commission. (b) An attorney authorized to practice law in the State of South Carolina may represent a party in any proceeding before the Commission."). Moreover, the Commission's statutory authority does not permit Ms. Minerd to act as a representative and seek relief on behalf of all SCE&G electric ratepayers. Order No. 2017-702, Docket No. 2017-305-E dated November 8, 2017 ("There is no language in Title 58 authorizing class actions to be brought before this Commission."). Because Ms. Minerd filed the Request on behalf of SCAMA and "in the interest of SCE&G ratepayers," she therefore has engaged in the unauthorized practice of law and seeks to represent others in direct contravention of South Carolina law and the Commission's regulations and precedent. Accordingly, the Request should be dismissed.

C. The Request does not set forth any facts or causes of action demonstrating SCE&G failed to comply with applicable statutory or regulatory law.

The Request also does not complain that the current bill form issued by SCE&G fails to comply with applicable statutory or regulatory law. Therefore, the Request is legally insufficient to constitute a complaint or to support a hearing or further proceedings in this matter.

Commission regulations provide that "[a]ny person complaining of anything done or omitted to be done by any person under the statutory jurisdiction of the Commission in contravention of any statute, rule, regulation, or order administered or issued by the Commission, may file a written complaint with the Commission, requesting a proceeding." 10 S.C. Code Ann. Regs. 103-824. The regulation further requires that complaints shall include, *inter alia*, "the name and address of the person

about whom the complaint is made;" a "concise and cogent statement of the factual situation surrounding the complaint;" the specific "act, rule, regulation, order, tariff, or contract" related to the complaint; and a "concise statement of the nature of the relief sought." 10 S.C. Code Ann. Regs. 103-824(A). *See also* 10 S.C. Code Ann. Regs. 103-819 (requiring that pleadings contain a "concise and cogent statement of the facts such person is prepared to present to the Commission," and a "statement identifying the specific relief sought by the person filing the pleading.").

The Request does not contain any allegations that SCE&G has "done or omitted to be done" anything that contravenes "any statute, rule, regulation, or order administered by the Commission" or any "provision in a tariff or contract on file with the Commission." 10 S.C. Code Ann. Regs. 103-824, 103-824(A)(3); *see also* 10 S.C. Code Ann. Regs. 103-339(2). Rather, the Request solely seeks to expand the requirements of current law in a manner that the Commission has previously determined to be improper. *See* Order No. 2012-884 at 12. Because the Request does not allege any wrongdoing by the Company, it must be dismissed as it alleges no facts that are sufficient to support a complaint proceeding or petition for relief under the Commission's regulations or to constitute any basis for relief.

D. <u>The Request improperly seeks to amend Commission regulations and to require information not required under current law</u>.

Complainants are seeking to expand the information SCE&G is required to include on customers' electric bills beyond that contemplated by 10 S.C. Code Ann. Regs. 103-339(2). However, the relief requested is this: "if SCE&G does not voluntarily post … BLRA charge[s] as a line-item on the monthly bill, that the PSC

and ORS immediately direct SCE&G to place such charge on the bill starting in January 2018." *See* Request at 1. In sum, Complainants therefore are asking the Commission to order SCE&G to modify its bills in a manner not currently required by any regulatory or statutory authority.

Currently, Commission regulations set forth what information must be provided on customers' electric bills. Specifically, 10 S.C. Code Ann. Regs. 103-339(2) provides that bills issued by electric utilities must show the following information:

> a. The reading of the meter at the beginning and at the end of the period for which the bill is rendered.
> b. The date on which the meter was read, and the date of billing and the latest date on which it may be paid without incurring a penalty, and the method of calculating such penalty.
> c. The number and kind of units metered.
> d. The applicable rate schedule, or identification of the applicable rate schedule. If the actual rates are not shown, the bill shall carry a statement to the effect that the applicable rate schedule will be furnished on request.
> e. Any estimated usage shall be clearly marked with the word "estimate" or "estimated bill."
> f. Any conversions from meter reading units to billing units or any information necessary to determine billing units from recording or other devices, or any other factors used in determining the bill. In lieu of such information on the bill, a statement must be on the bill advising that such information can be obtained by contacting the electrical utility's local office.
> g. Amount for electrical usage (base rate).
> h. Amount of South Carolina Sales Tax (dollars and cents).
> i. Total amount due.
> j. Number of days for which bill is rendered or beginning and ending dates for the billing period.

Complainants do not dispute that SCE&G's bills comply with this regulation; yet they ask the Commission to impose on SCE&G the additional requirement of displaying separately the portion of customers' bills associated with the BLRA.

Granting the relief requested thus would change or alter the requirements of 10 S.C. Code Ann. Regs. 103-339(2) and create a "binding norm" regarding BLRA-related charges.

However, such a change in the regulation may only be implemented through a properly enacted regulation or regulatory amendment. *See Myers v. S.C. Dep't of Health & Human Servs.*, 418 S.C. 608, 620, 795 S.E.2d 301, 307 (Ct. App. 2016) ("When [an agency's] action or statement so fills out the statutory scheme that upon application one need only determine whether a given case is within the rule's criterion, then it is a binding norm which should be enacted as a regulation.") (citations omitted). In fact, the Commission has recognized this requirement on two previous occasions:

> [I]ssuing an order in this proceeding is not the appropriate manner in which to implement a change to [10] S.C. Code Ann. Regs. 103-339(2). Rather, the appropriate mechanism for such a change would be to initiate a rulemaking proceeding where the Commission receives public comment and the General Assembly has the requisite opportunity to review and approve the regulation.

Order No. 2012-884 at 12; *see also* Order No. 2012-951 (denying an identical request for relief for the same reasons set forth in Order No. 2012-884); Request at 5 (quoting Order No. 2012-884 at 12).

This is settled law and Complainants have not presented any argument demonstrating a change in law that would warrant a different conclusion or identified any legal authority to contradict the Commission's prior findings. *See 330 Concord St. Neighborhood Ass'n v. Campsen*, 309 S.C. 514, 517, 424 S.E.2d 538, 540 (Ct. App.

1992) ("An administrative agency is generally not bound by the principle of stare decisis but it cannot act arbitrarily in failing to follow established precedent."). Therefore, and as the Commission has previously held, the relief requested by Complainants may only be established in the context of a rulemaking proceeding conducted pursuant to the South Carolina Administrative Procedures Act, S.C. Code Ann. § 1-23-10, *et seq.* Accordingly, the relief requested is improper for consideration by the Commission in this proceeding and must be denied.

E. Complainants have not identified any concrete or particularized harm resulting from the current form of SCE&G's electric bills and do not have standing to bring the Request.

Finally, Complainants do not allege that they have suffered any particularized harm as a result of the current format of the Company's electric bills. Instead, Complainants only allege that identifying the portion of a customer's bill associated with the BLRA will "allow[] the ratepayer to avoid a needless waste of time to conduct research on the matter." Request at 3. These general criticisms are insufficient to provide any plausible basis to demonstrate that Complainants have standing to pursue the relief requested in the Request.

Complainants make no allegation that customers will be harmed unless the Company's bill form is modified, but merely complain, without any specificity, that identifying the portion of a customer's bill attributable to the BLRA would provide additional information to "facilitate the customer's awareness and understanding of the bill." Request at 7. To the contrary, however, the Commission has previously held that "[t]he required information to be included on electricity bills provides a balance

between providing customers with information necessary to ensure that each bill is calculated correctly while ensuring that the bill does not become overly complicated or confusing to customers." Order No. 2012-884 at 12. Moreover, the Commission has recognized that "[e]ach bill must include SCE&G's contact information so that customers who have questions about their bill may raise them with Company representatives." Order No. 2012-884 at 12. For these reasons, the Request fails to identify any actual or concrete injury that would be suffered if the relief is not granted.

Complainants' claims that customers must "conduct research on the matter" in order to determine charges resulting from the BLRA also are unavailing and this basis for the requested relief is insufficient to satisfy the requisite burden of Complainants to establish standing in order to advance their Request. *See also Sea Pines Ass'n for the Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res.*, 345 S.C. 594, 600, 550 S.E.2d 287, 291 (2001). (The "imminent prejudice must be of a personal nature to the party laying claim to standing and not merely of general interest common to all members of the public."). Ms. Minerd has made clear her understanding that "approximately 18.32%" of an SCE&G residential customer's bill relates to the BLRA. Request at 3. Thus, by the plain language of the Request, she has demonstrated her ability to comprehend the effect of the BLRA on her bill. Ms. Minerd therefore does not have standing because she cannot be "affected in a personal and individualized way by the [Commission's] decision" if her requested relief is not granted. *Smiley*, 374 S.C. at 330, 649 S.E.2d at 33 (quoting *Lujan*, supra).

In sum, the generalized grievances advanced by Complainants simply are insufficient to satisfy the requisite burden of Complainants to establish that they have standing to advance their Request. For these reasons, the Commission should dismiss the Request in its entirety.

CONCLUSION

For the foregoing reasons, SCE&G respectfully requests that the Commission issue an order dismissing and/or granting judgment on the pleadings of the Request on the grounds that SCAMA is not a legitimate organization and does not have standing to bring this action. Further, this Motion should be granted because the Request (1) is the product of the unauthorized practice of law; (2) improperly seeks to bring an action in a representative capacity on behalf of other customers; (3) fails to comply with applicable statutory and regulatory law; (4) seeks relief that has previously been denied by the Commission; and (5) fails to state facts sufficient to constitute a basis for relief under pertinent law. SCE&G further moves that the Commission hold in abeyance the testimony deadlines set forth in the Revised Scheduling Notice dated December 19, 2017, until such time as this matter may be considered and resolved by the Commission.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

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